

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date September 21, 2005 Division: County Attorney

Bulk Item: Yes      No XXX Staff Contact Person: Natileene W. Cassel

**AGENDA ITEM WORDING:**

Approval of contract amendment between *Monroe County* and *The Tower Group, Inc.*, which removes the requirement that the architect approve change orders for the *Freeman Justice Center* project and to take appropriate action based upon the recommendation of the County Engineer and the County Attorney.

**ITEM BACKGROUND:**

Due to the architect's refusal to approve or disapprove change orders, and/or the Architects late approval or disapproval of change orders the construction of the Freeman Justice Building has been held up and is about to cease.

**PREVIOUS RELEVANT BOCC ACTION:**

On June 16, 2004, the Board approved awarding the prime contract to construct the *Freeman Justice Center* to *The Tower Group, Inc.* On July 20, 2005, the Board approved an amendment to the contract between *The Tower Group, Inc.* and *Monroe County*, which authorized the removal of the requirement that the Architect approve change orders on the project.

**CONTRACT/AGREEMENT CHANGES:**

Remove the requirement that the Architect approve change orders and corresponding Change Order Directives for the *Freeman Justice Center*.

**STAFF RECOMMENDATIONS:**

Approve recommendation at meeting.

TOTAL COST:                      BUDGETED: YES      NO     

COST TO COUNTY:                      SOURCE OF FUNDS: N/A

REVENUE PRODUCING: YES      NO XX AMOUNT PER MONTH N/A Year N/A

APPROVED BY: County Atty XX OMB/Purchasing      Risk Management     

DIVISION DIRECTOR APPROVAL: John R. Collins 9/16/05  
(John R. Collins, County Attorney)

DOCUMENTATION: Included XX Not Required     

DISPOSITION:                                      AGENDA Item#



**CONTRACT AMENDMENT TO**  
**CONTRACT BETWEEN MONROE COUNTY BOARD OF COMMISSIONERS**  
**AND THE TOWER GROUP FOR THE FREEMAN JUSTICE CENTER**

THIS AMENDMENT (herein after "Amendment") to the Contract between Owner and Contractor (herein after "Contract") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between Monroe County Board of County Commissioners (herein after "County"), a political subdivision of the State of Florida and The Tower Group (herein after "Contractor").

WITNESSETH

WHEREAS, on the 17<sup>th</sup> day of June, 2004, the parties entered into the Contract for the construction of the Freeman Justice Center: and

WHEREAS, County has authorized the amendment to remove the requirement that the Architect approve change orders and the Contractor has also agreed to the removal of the requirement; now therefore

IN CONSIDERATION of the mutual promises contained herein, the parties hereby agree as follows:

1. Paragraph 7.1.2 of the General Conditions of the Contract shall be amended as follows:

7.1.2 A Change Order shall be based upon agreement among the Owner, and Construction Manager; a Construction Change Directive require agreement by the Owner, Construction Manager and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

2. Paragraph 7.2.1 of the General Conditions of the Contract shall be amended as follows:

7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager and Contractor, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

3. Any and all documentation related to a proposed Change Order or Construction Change Directive shall still be submitted to the Architect for its review and approval in accordance with the procedure set forth in the Contract. Should the Architect not act timely with respect to issuance of Change Order(s) or Construction Change Directive(s), or should the Architect reject or otherwise fail to approve a Change Order or Constructive Change Directive that the Owner's project representatives or Construction Manager believe should be issued, then, in accordance with this Amendment to Paragraphs 7.1.2



and 7.2.1 above, Change Order(s) and/or Construction Change Directive(s) may be issued without the agreement of the Architect.

4. This Amendment shall be effective on and retroactive to July 20, 2005, when it was approved by the Board of County Commissioners.

5. The remaining terms of the Contract, not inconsistent herewith, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Amendment on the date stated above.

Attest: DANNY L. KOLHAGE, CLERK

By: \_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

BOARD OF COUNTY  
COMMISSIONERS OF MONROE  
COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor/Chairman

Attest:

By: \_\_\_\_\_

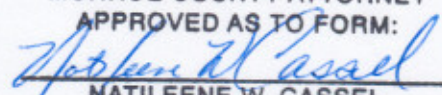
Title: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
NATILEENE W. CASSEL  
ASSISTANT COUNTY ATTORNEY

Date 9/1/05

Original

## Section 00500

\*\* COVER PAGE ONLY \*\*

# Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a STIPULATED SUM

## AGREEMENT

made as of the 16th day of June in the year of TWO THOUSAND FOUR  
(In Words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name and address)

Monroe County Board of County Commissioners  
500 Whitehead Street  
Key West, Florida 33040

and the Contractor:  
(Name and address)

The Tower Group  
405 Southwest 148<sup>th</sup> Avenue  
Davie, Florida 33325

For the following Project:  
(Include detailed description of project,  
location, address and scope)

Freeman Justice Center,  
Jackson Square Complex – 500 Whitehead  
Street, Key West, Florida 33040

SCOPE: Construction of a new three story court house Building at the Jackson Square Complex, including installation of site utilities, irrigation, landscaping, grading, paving and drainage.

The Construction Manager is:  
(Name and address)

Stephanie Coffey  
Monroe County Construction Management  
1100 Simonton Street  
Second Floor – Room 2-216  
Key West, Florida 33040

The Architect is:

Gonzalez Architects  
32 East Bay Street  
Savannah, Georgia 31401

The Owner and Contractor agree as set forth below.

FILED FOR RECORD  
2004 JUL 29 PM 2:37  
DAVID L. COLLAGE  
CLERK, CT.  
MONROE COUNTY, FLA.

copy only  
58 pages



.2 The Contractor agrees that whether or not any delay, regardless of cause, shall be the basis for an extension of time he shall have no claim against the Owner or Construction Manager for an increase in the Contract price, nor a claim against the Owner or Construction Manager for a payment or allowance of any kind for damage, loss or expense resulting from delays; nor shall the Contractor have any claim for damage, loss or expense resulting from interruptions to, or suspension of, his work to enable other contractors to perform their work. The only remedy available to the Contractor shall be an extension of time.

### **6.3 Owner's Right to Clean Up**

6.3.1 If a dispute arises among the Contractor, other Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Construction Manager, in consultation with the Architect, determines to be just.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 Changes**

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor; a Construction Change Directive require agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

#### **7.2 Change Orders**

7.2.1 A change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect and Contractor, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.